



State of Delaware

Rules and Regulations

Violent Crimes
Compensation
Board

Contains all revisions
through October 15, 1999

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**STATE OF DELAWARE
DELAWARE'S VIOLENT CRIMES COMPENSATION BOARD
RULES AND REGULATIONS**

Declaration:

WHEREAS it is expedient to revise and recodify the rules and regulations of the Violent Crimes Compensation Board of the State of Delaware,

NOW, THEREFORE, be it ordered as follows:

1. The rules as hereinafter set forth take effect and be in force in the State of Delaware on and after June 1, 1978.
2. All rules existing prior to the date of this publication are hereby repealed.
3. The laws of the State of Delaware shall be controlling in the event of any conflict arising or existing between the law and the rules as set forth in this publication and the laws of the State of Delaware and amendments thereto.
4. The use of the word Board as it appears in the rules of this publication or as it may appear in any future amendments thereto shall mean the Violent Crimes Compensation Board.
5. Rules and Regulations of the Violent Crimes Compensation Board shall be adopted according to the requirements of the Administrative Procedure Act, 29 Del. Laws, c. 101, Subchapters I & II.

Ann L. DelNegro
Executive Director

V. Lynn Gregory
Leah W. Betts
Thomas W. Castaldi
Saxton C. Lambertson
Stephen L. Manista

Chairperson
Vice Chairperson
Board Member
Board Member
Board Member

v.

October 15, 1999

RULE 1 - DEFINITIONS

The definitions set forth in Title 11, Chapter 90 of the Delaware Criminal Code are, hereby adopted by this Board, and incorporated by reference in these rules which reads as follows:

Section 9002 "The following words, terms and phrases, when used in this Act, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

9002. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Board" shall mean the Violent Crimes Compensation Board as established by this chapter.

(2) "Child" shall mean an unmarried person who is under 18 years of age, and shall include the stepchild or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

(3) "Crime" for purposes of this chapter shall mean:

a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms; (Amended by statute 06/15/89)

b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

c. Any specific offense occurring in another state, possession or territory of the United States in which a person whose domicile is in Delaware is a victim, if the offense contains the characteristics of murder, rape, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title; (Added by statute 06/08/88)

d. Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms; or

e. An act of terrorism, as defined in Section 2331 of Title 18, United States Code, committed outside the United States against a resident of this State. (Amended by statute 4/8/97.)

(4) "Dependent" shall mean a person wholly or substantially dependent upon the income of the victim at the time of victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim.

(5) "Guardian" shall mean any person governmental instrumentality or private organization who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent. (Amended by statute 07/13/98)

(6) "Incompetent" shall mean a person who is incapable of managing the person's own affairs, as determined by the Board or by a court of competent jurisdiction.

(7) "Personal injury" shall mean bodily harm, or extreme mental suffering, and shall include pregnancy of the victim.

(8) "Pecuniary loss" in instances of personal injury shall include medical expenses, including psychiatric care and mental health counseling of the victim or secondary victims; nonmedical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past earnings; and loss of future earnings because of a disability resulting from such personal injury. "Pecuniary loss" in instances of death of the victim shall include funeral and burial expenses, loss of support to the dependents of the victim and mental health counseling to secondary victims. "Pecuniary loss" includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. (Amended by statute 07/14/93)

(9) "Victim" shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this chapter.

(10) "Secondary victims" shall mean any parent, son, daughter, spouse, brother or sister of the victim, or any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence. (Added by statute 07/14/93; Amended by statute 07/13/98)

RULE II - ADDRESS OF THE BOARD; OFFICE HOURS

(A) All communications of the Board shall be addressed to the "Violent Crimes Compensation Board, State of Delaware", at the office address of the Board or such other address as the Board shall otherwise make known.

(B) The office of the Board will be open from 8:00 A.M. until 4:00 P.M. of each weekday except legal holidays, and unless otherwise provided by statute or Executive Order. (Revised by Board 052391)

RULE III - STATEMENT OF GOALS

The Violent Crimes Compensation Board, hereby, declares that it serves a public purpose and is of benefit to:

- 1. Individuals who are victimized within the State of Delaware;**
- 2. Delaware residents who are victimized without the State of Delaware in possessions or territories of the United States not having eligible crime victim compensation programs; (Added by statute 06/08/88)**
- 3. Delaware residents who are victimized during acts of terrorism committed outside the United States. (Added by statute 040897)**

The Violent Crimes Compensation Board shall promote the welfare of victims of crime by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the family and dependents of those victims.

RULE IV - THE SECRETARY; FILING OF PAPERS

(A) The Secretary shall have custody of the Board's seal and official records, and shall be responsible for the maintenance and custody of the docket, and records of the Board including its verbal and written findings, determinations, reports, opinions, orders, rules and regulations, and approved forms.

(B) All orders and other actions of the Board shall be authenticated or signed by the Secretary or other person as may be authorized by the Board.

(C) All pleadings or papers required to be filed with the Board shall be filed in the office of the Board within the time limit, if any, fixed by law or Board rule for such filing; and, similarly.

(D) Crime victims case files and records maintained by the Violent Crimes Compensation Board shall fall under the open records provision of the Freedom of Information Act, 29 Del. Laws, c. 100.

(E) Communications addressed to the Board, and all petitions and other pleadings; all reports; exhibits; dispositions; transcripts; orders; and other papers or documents, received or filed in the office and kept by the Secretary, shall be stamped showing the date of the receipt or filing thereof.

RULE V - FILING OF CLAIMS

In addition to all other statutory requisites, claims must be filed on official forms which include subrogation, authorization, and consent agreements in the office of the Violent Crimes Compensation Board, located at 240 N. James Street, Suite 203, Wilmington, Delaware, 19804 within one year of the date of the crime. (Revised by address change 09/13/99)

RULE VI - BURDEN OF PROOF

In compensation cases, the burden of proof shall be upon the petitioner. It is the claimant/victim's burden to prove that he/she was an innocent victim of a violent crime, and that he/she cooperated in the apprehension and/or conviction of the perpetrator of the crime.

RULE VII - EXHIBITS

Exhibits and case file documents submitted prior to or after the Violent Crimes Compensation Board's hearings shall be maintained in accordance with the provisions of the Department of State, Bureau of Archives and Records Management.

RULE VIII - INVESTIGATION OF CLAIMS

All claimants must fully cooperate with investigators or representatives of this agency in order to be eligible for an award. In the event cooperation is refused or denied, the Board may deny a claim for lack of cooperation.

RULE IX - RULES OF EVIDENCE

The Board is not bound by the Rules of Evidence. Hearsay evidence is admissible.

RULE X - HEARINGS

(A) Notice of hearings shall be posted in the office of the Violent Crimes Compensation Board at least seven days prior to the scheduled hearing date. Special meetings or rescheduled hearings shall be posted no later than 24 hours prior to the scheduled time.

(B) The Board may receive as evidence, any statements, documents, information, or material it finds relevant and of such nature as to afford the claimant a fair hearing. The Board may also accept police reports, hospital records and reports, physicians reports, etc. as proof of the crime and injuries sustained, without requiring the presence of the investigating officer or attending physician at the hearing.

(C) Any claimant may request to be heard by the Board following the initial claim hearing, if he/she is dissatisfied with the decision of the Board. The request to be heard before the Board must be in writing and must be received in the office of the Violent Crimes Compensation Board within 15 days of the Board's decision. The written statement must include any and all reasons for the dissatisfaction.

(D) The Board may arrange for a medical or mental health examination by a physician designated by the Board. A written report of such examination shall be filed by the attending physician with the Board. The physicians's fee shall be paid directly by the Board.

(E) All witnesses shall testify under oath (or by affirmation), and a record of the proceedings shall be recorded. The Board may examine the claimant and all witnesses.

(F) Claim hearings shall be open to the public. However, the Board may hold private deliberations under the following circumstances:

(1) When the claim to be considered derives from any sexual offense;
(Added by statute 05/22/97)

(2) When the claim to be considered derives from any offense by a child unless such child has been deemed amenable to the jurisdiction of a criminal court; (Added by statute 05/22/97)

(3) When the claim to be considered derives from any matter not yet adjudicated. (Added by statute 05/22/97)

(G) A claim under \$5,000.00 shall be heard by one Board Member.

(H) A request to reopen a claim may be heard by one Member if the reopen request for compensation is less than \$5,000.00. If the reopen request for compensation is more than \$5,000.00, then the request to reopen shall be heard by a quorum of the Board.

(I) If a claim is filed more than one (1) year after the crime occurrence, or if the crime was reported to law enforcement more than 72-hours after the commission of the crime, then the claim may be reviewed by one member to accept or deny for processing.

(J) Under no circumstances shall the Board reopen or reinvestigate a case after the expiration of two (2) years from the date of the most recent decision rendered by the Board.

(K) Notwithstanding the provisions of subsection (J) of this section and paragraphs (3), (4), and (5) of section 9006(a) to the contrary, the Board may make an award for the payment of mental health counseling services pursuant to this chapter upon a claim made by the victim of any crime which occurred prior to the victim's eighteenth birthday so long as the occurrence of the crime is appropriately documented, and such claim is filed prior to the victim's twentieth birthday. The Board may also, upon good cause shown, permit a victim whose claim had previously been decided by the Board to request that such claim be reopened for the purpose of making an award for payment for mental health counseling services, and the Board may reopen or reinvestigate the case and award such compensation, if such victims had not yet reached his or her eighteenth birthday by the date of the Board's original decision, and provided that the request for reopening is filed prior to the victim's twentieth birthday. (Added by statute 07/13/98)

RULE XI - ATTORNEYS

All claimants have the right to be represented before the Board by an attorney, who is licensed to practice law in the State of Delaware. The attorney shall file a notice of appearance.

Service upon the claimant's attorney shall be deemed as service on the party he/she represents.

RULE XII - ATTORNEY FEES

(A) The attorney representing a claimant before this Board must submit an affidavit setting forth the total number of hours expended in case preparation and describe the nature of the work performed.

(B) The attorney's fee shall not exceed \$1,000.00.

(C) Attorney fees shall be awarded at the discretion of the Board.

(D) Attorney fees may be 15% of the total amount awarded to the victim, but shall not exceed \$1,000.00; or may be a fee based on the number of hours spent in representing the claimant. Hourly fee rates shall be determined by the Board.

(E) No prior agreement between an attorney and a client to pay the attorney a fee out of the client's award will be honored by the Board. Any such arrangement is unlawful.

(F) Upon application to the Board for attorney fees, the service rendered on behalf of the victim, as well as the time spent and uniqueness of the case, will be considered in determining the allowance of attorney fees.

RULE XIII - FORMS

The Board shall prepare and furnish claim forms and brochures.

RULE XIV - SUBPOENAS, ETC.

Any Board member and the Executive Director shall have the power to administer oaths, subpoena witnesses, and compel the production of books, papers, and records relevant to any investigation or hearing authorized by 11 Del. Laws, c. 90, Section 9015.

The Board or any staff member may take, or request, affidavits and dispositions of witnesses residing within or without of the State.

RULE XV - EMERGENCY AWARDS

The Board will make an emergency award only upon a showing of dire necessity. The claimant, must, in writing, request an emergency award when submitting his/her claim form and show just cause as to why such an award should be considered. No such award will be made until the police report is acquired.

RULE XVI - DEPENDENCY

All questions relating to dependency shall be determined in accordance with 11 Del. Laws, c. 90, Section 9002 of the Delaware Code which reads as follows:

Section 9002(4) "Dependent shall mean a person who is wholly or substantially dependent upon the income of the victim at the time of the victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of such victim."

RULE XVII - APPEAL

All questions relating to an appeal shall be determined in accordance with 11 Del. Laws, c. 90, Section 9005 of the Delaware Code which reads as follows:

Section 9005(3) "The Board is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Board may make its award of compensation dependent upon such condition or conditions as it deems desirable. Any claimant who is aggrieved by the Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within thirty (30) days of the decision of the Board. Any appeal to Superior Court shall not be de novo."

RULE XVIII - DENIAL OF CLAIM; REDUCTION

All questions relating to the denial of a claim shall be determined in accordance with 11 Del. Laws, c. 90, Section 9006, of the Delaware Code which reads as follows:

(a) The Board shall deny payment of a claim for the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;

(2) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime;

(3) Where the claimant refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question;

(4) Where the claim has not been filed within one (1) year after the personal injury on which the claim is based, unless an extension is granted by the Board;

(5) Where the claimant has failed to report the crime to a law enforcement agency within 72 hours of its occurrence; provided, however, that the Board, in its discretion, may waive this requirement if the circumstances of the crime render this requirement unreasonable. (Added by statute 05/21/86)

(6) Where the victim is injured as a result of their own suicide or attempted suicide; (Added by statute 05/23/91)

(7) Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant. (Added by statute 05/23/91)

(8) Where the victim is delinquent in the payment of any penalty assessment levied pursuant to Section 9012 of this title, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Board may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Board may, for hardship or other good cause, waive the provisions of this paragraph in their entirety. (Added by statute 04/23/97)

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Board may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused injury or death, the Board shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced, if the victim of the personal injury in question, either through negligence or through willful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

RULE XIX - PUBLICATION OF CLAIMS

The Board shall maintain confidentiality of records in accordance with the open records provision of the Freedom of Information Act, 29 Del. Laws, c. 100.

RULE XX - AVAILABILITY OF RULES

The rules of the Board shall be available to the public at the office of the Violent Crimes Compensation Board. A copy of these rules and regulations shall be on file with all the County and State law libraries.

RULE XXI - CONSTRUCTION OF RULES

These rules shall be liberally construed to accomplish the purpose of 11 Del. Code, c. 90.

RULE XXII - AMENDMENTS OF RULES

In accordance with 11 Del. Laws, c. 90, Section 9004:

"The Board shall have the following functions, powers, and duties:

Section 9004(4) to adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out the provisions of this chapter."

New rules may be adopted and any rules may be amended or rescinded by the Board at a regular or special meeting following compliance with the Administrative Procedures Act, 29 Del. Laws, c. 101, Subchapters I & II.

RULE XXIII - QUORUM

Three members shall constitute a quorum for all hearings and business of the Board, except a hearing in which the claimant has requested no more than \$5,000.00 compensation, and in that instance a quorum of the Board shall be one (1) member. (Amended by statute 05/10/90)

Where an opinion is divided, majority rule shall prevail.

RULE XXIV - MEETINGS

Meetings shall be held upon proper notice by the Chairperson or the Executive Director at such time and place directed.

(a) The Board will maintain a running agenda of all business matters to be discussed and acted upon. Following the hearing of claims the Board, at its discretion and as time permits, may convene a session to address any matters on its running agenda.

(b) A meeting solely for the purpose of addressing Board business shall be held within 30 days to address any three or more new business topics. Adopted October 17, 1991. Revised January 7, 1993.

RULE XXV - SEAL

The Board shall have a seal for authentication of its orders, awards and proceedings, upon which shall be inscribed the words - **VIOLENT CRIMES COMPENSATION BOARD, STATE OF DELAWARE.**

RULE XXVI - MENTAL SUFFERING AWARD

Removed by statute 02/11/92. Public Hearing to officially remove from Rules on 11/24/98.

RULE XXVII - BURIAL AWARDS

The aggregate award for funeral and burial shall not exceed \$6,000.00 including:

- A.) \$4,000.00 for funeral expenses including up to \$150.00 for flowers
- B.) \$750.00 for the costs of opening and closing of the grave
- C.) \$750.00 for the purchase of a cemetery plot
- D.) \$500.00 for the purchase of a grave marker

Burial award adopted by Board on 06/02/88. Revised by Board 10/25/90, 03/14/91, 05/07/92 and 02/04/99.

RULE XXVIII - MENTAL HEALTH COUNSELING AWARDS

VCCB decision to rescind Rule XXVIII 08/01/96, public hearing to officially remove from rules 11/28/98. See Archival Rules XXVIII.

RULE XXIX - MENTAL HEALTH PRACTITIONER QUALIFICATIONS/LICENSURE

To be eligible for crime victim's compensation for mental health counseling treatment, within and without the State of Delaware, treatment must be provided by a practitioner possessing an advanced degree in an applied mental health discipline. The advanced degree should be in Psychiatry, Psychology, Social Work, Counseling, or Psychiatric Nursing.

To be eligible for crime victim's compensation for adult psychological assessments, within and without the State of Delaware, a licensed psychologist or a licensed psychiatrist must perform the assessment unless waived by the Board.

To be eligible for crime victim's compensation for child psychological assessments, within and without the State of Delaware, a licensed child psychologist or a licensed child psychiatrist must perform the assessment unless waived by the Board.

To be eligible for crime victim's compensation for mental health counseling treatment in the State of Delaware, services must be provided by a licensed mental health practitioner. The five disciplines recognized by the Violent Crimes Compensation Board for payment of mental health counseling benefits are: Licensed Psychiatrist, Licensed Psychologist, Licensed Clinical Social Worker, Licensed Mental Health Counselor, and Licensed Clinical Nurse Specialist.

Payment for mental health treatment received outside the State of Delaware will be evaluated for practitioner's licensure on a case-by-case basis by the Violent Crimes Compensation Board.

The Violent Crimes Compensation Board may consider payment for services rendered by an unlicensed provider if the provider is practicing under the direct supervision of a licensed practitioner in one of the disciplines recognized by the Violent Crimes Compensation Board, as set forth in paragraph two, sentence two. Claims for payment of services rendered by an unlicensed practitioner will be decided on a case-by-case basis by the Violent Crimes Compensation Board. (Approved to add as rule by Board on 11/20/97, public hearing to add rule on 02/25/98).

(Board decision to revise rule on 09/17/98, public hearing to amend Rule XXIX on 11/24/98. See Archival Rules.)

RULE XXX - CHILD VICTIM COUNSELING & ASSESSMENT PROGRAM (CCAP)

For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling. (Adopted by Board 03/01/99) revised

For the purposes of section 9020(c), up to \$1,200.00 may be paid from the victim's compensation fund on behalf of each child victim of crime for reasonable costs incurred for psychological assessments and short-term counseling. Payment for the cost of a psychological assessment shall be limited to no more than \$350.00. Payment for the cost of short-term counseling (out-patient therapy) shall be limited to no more than \$850.00, and no more than \$85.00 per therapy session. (Board decision to adopted Rule XXX on 09/17/98, public hearing to adopt Rule XXX on 11/24/98).

(Rule XXX non-substantive changes revised by Board on 07/22/99).